

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

September 18, 2002 Session

**STEPHANIE TATE**  
**v.**  
**STATE OF TENNESSEE**

**Appeal from the Tennessee Claims Commission, Western Division**  
**No. 98-002-195     Randy C. Camp, Commissioner**

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**No. W2002-00177-COA-R3-CV - Filed April 14, 2003**

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This is a Claims Commission case. The claimant's decedent was struck and killed by a train owned and operated by a railroad company. The claimant filed suit against the State of Tennessee, asserting negligent deprivation of a statutory right. The claimant argued that the Tennessee Claims Commission had jurisdiction under T.C.A. § 9-8-307(a)(1)(N). The State filed a motion to dismiss the claim for failure to state a cause of action under T.C.A. § 9-8-307. The Claims Commission found that the complaint presented no proof that the road on which the accident occurred was a State highway or that the State maintained or controlled the road or the railroad crossing. The Claims Commission also found that none of the federal statutes, state statutes, rules, or regulations cited by the claimant provided for jurisdiction under T.C.A. § 9-8-307(a)(1)(N). The claimant appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission  
Affirmed**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Pamela R. O'Dwyer and Randall D. Larramore, Chattanooga, Tennessee, and Jeffrey A. Garrety, Jackson, Tennessee, for appellant, Stephanie Tate.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Michael B. Leftwich, Assistant Attorney General, for the appellee, State of Tennessee.

## OPINION

On June 18, 1997, Peggy Travelstead (“Decedent”) was driving her car on Charles Moore Road in Dyer County, Tennessee. As she crossed a railroad track owned by the Illinois Central Railroad Company (“Railroad”), she was struck and killed by a train owned and operated by the Railroad.

Claimant/Appellant Stephanie Tate (“Tate”) sued Respondent/Appellee State of Tennessee (“State”) on behalf of the Decedent’s heirs. Tate asserted that the Tennessee Claims Commission had jurisdiction to hear her lawsuit under section 9-8-307(a)(1)(N) of the Tennessee Code Annotated.<sup>1</sup> She argued that the State was negligent in its failure to adhere to certain federal and state laws affecting railroad crossings in Tennessee.

The State filed a motion to dismiss the claim, asserting that Tate’s complaint failed to state a claim for negligent deprivation of a statutory right that would give rise to a cause of action as contemplated in section 9-8-307 of the Tennessee Code Annotated. In her response to the State’s motion to dismiss, Tate asserted that section 4-3-2303 of the Tennessee Code Annotated<sup>2</sup> created a

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<sup>1</sup>The portions of section 9-8-307 of the Tennessee Code Annotated pertinent to this appeal are as follows:

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

....

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subsection must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

....

(J) Dangerous conditions on state maintained highways. The claimant under this subsection must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;

....

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state’s violation of the particular statute’s provisions; . . .

Tenn. Code Ann. § 9-8-307(a)(1)(C),(J), and (N) (Supp. 2002).

<sup>2</sup>Section 4-3-2303 of the Tennessee Code Annotated states in part:

The commissioner has the power *and duty* to:

....

(continued...)

duty owed by the State to the Decedent. She contended that the language used in section 4-3-2303 resulted in the negligent deprivation of a statutory right owed to the Decedent, and therefore, the Claims Commission had jurisdiction under section 9-8-307(a)(1)(N). Tate also cited to subsections 9-8-307(a)(1)(C) and (J) in her response. In the State's reply to Tate's response, it asserted that while section 4-3-2303 may create a duty by the Commissioner of Transportation to the public in general, the statute does not create rights in an individual claimant.

In granting the State's motion to dismiss, the Claims Commissioner ("Commissioner") found, inter alia, that (1) a claim under section 9-8-307(a)(1)(C) fails because Tate "presented no proof that Charles Moore Road is a state highway or that the railroad crossing is owned by any other entity other than [the Railroad]"; (2) a claim under section 9-8-307(a)(1)(J) fails because Tate presented no proof that the State maintained or controlled the road or the railroad crossing; and (3) a claim under section 9-8-307(a)(1)(N) fails because "neither the power of Congress to dictate certain responsibilities and duties to state governments in order to receive federal funds nor the failure of the state to comply with these requirements appear to establish in an individual the right to bring a claim under [section 9-8-307(a)(1)(N)]." From this order, Tate appeals.

On appeal, Tate asserts the Commissioner erred in granting the State's motion to dismiss. Tate contends that the Claims Commission has jurisdiction over the case because, under federal and state law, the State has control over the railroad crossing as contemplated in section 9-8-307(a)(1)(C); because Charles Moore Road is a state highway as contemplated in section 9-8-307(a)(1)(J); and finally, because receipt of federal funds creates a duty upon the State that meets the requirements of section 9-8-307(a)(1)(N).

A motion to dismiss for failure to state a claim upon which relief may be granted under rule 12.02(6) of the Tennessee Rules of Civil Procedure tests the sufficiency of the plaintiff's claim, not the strength of the plaintiff's proof. *Hall v. Campbell*, No. W2002-00301-COA-R3-CV, 2002 Tenn. App. LEXIS 765, at \*9 (Tenn. Ct. App. Oct. 29, 2002) (citing *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994)). The motion asserts that, as a matter of law, the allegations in the complaint do not constitute a cause of action. *Leach v. Taylor*, No. W2002-01091-COA-R3-CV, 2002 Tenn. App. LEXIS 925, at \*8 (Tenn. Ct. App. Dec. 30, 2002). The factual allegations in the complaint must be taken as true and construed liberally in favor of the

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<sup>2</sup>(...continued)

(2) Establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state;

....

(4) Apply for and accept on behalf of the state any grant from the federal government to be used for any of the purposes of the department, and to *comply with any conditions and limitations annexed*;

...

Tenn. Code Ann. § 4-3-2303(2) and (4) (1998) (Claimant/Appellant Tate's emphasis).

plaintiff. On review, a motion to dismiss may be affirmed if those allegations, taken as true and construed in the plaintiff's favor, fail to state a claim under which the plaintiff would be entitled to relief. *Hall v. Campbell*, 2002 Tenn. App. LEXIS 765, at \*10 (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)). All legal conclusions reached by the trial court are reviewed *de novo*, with no presumption of correctness. *Doe v. Sunquist*, 2 S.W.3d 919, 922 (Tenn. 1999).

Tate first argues that the Claims Commission erred in dismissing her claim under section 9-8-307(a)(1)(C) of the Tennessee Code Annotated. Section 9-8-307(a)(1)(C) provides that the Claims Commission has jurisdiction when “[n]egligently created or maintained dangerous conditions [exist] on state controlled real property.” She asserts that the State exercises control over the railroad crossing, and therefore, the State has a legal duty to maintain safe conditions at the railroad crossing. Tate’s complaint, however, does not allege that the railroad crossing was state-owned or state-controlled real property; nor are there any allegations from which state control might be inferred. Under these circumstances, we find no error in the dismissal of Tate’s complaint under this section.<sup>3</sup> *See Cone v. State*, No. M2001-02242-COA-R3-CV, 2002 Tenn. App. LEXIS 591, at \*9-10 (Tenn. Ct. App. Aug. 13, 2002) (holding that the plaintiff’s claim under section 9-8-307(a)(1)(J) was properly dismissed because the plaintiff “alleged few, if any, facts in support of his claim . . . that the State ‘maintained’ the highway at issue.”)

Tate next asserts that the Claims Commission erred in dismissing her claim under section 9-8-307(a)(1)(J) of the Tennessee Code Annotated. This statute provides that the Claims Commission has jurisdiction when a dangerous condition exists on a state-maintained highway. On appeal, Tate contends that because the crossing is included on the State’s list of railroad crossings, as required under the Federal Highway Safety Act, the crossing is therefore considered to be State maintained. Once again, however, Tate’s complaint does not allege that the State maintained the highway in question. Therefore, we find no error in the dismissal of the complaint on this ground.

Finally, Tate argues that the Claims Commission erred in dismissing her claim under section 9-8-307(a)(1)(N) of the Tennessee Code Annotated. She asserts that section 4-3-2303 of the Tennessee Code Annotated creates a duty in the Tennessee Commissioner of Transportation to comply with certain federal conditions and limitations regarding railroads. Arising out of this duty, Tate asserts, individuals have a private right of action for the State’s failure to comply with the federal conditions and limitations.

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<sup>3</sup>Tate’s appellate reply brief argues that because her complaint alleged jurisdiction under “T.C.A. § 9-8-303 [sic] *et seq.*,” the State therefore had notice of the Claims Commission’s jurisdiction. However, Title 9, Part 8, Section 3 of the Tennessee Code Annotated includes over seventy-nine sections and subsections. Thus, Tate’s reference to “9-8-307 *et seq.*” is insufficient.

Even if we assume, *arguendo*, that Tate specifically alleged jurisdiction under 9-8-307(a)(1)(C), this is not a factual allegation that would be “taken as true,” but rather a legal conclusion. An example of a factual allegation that would be “taken as true” by the Claims Commission in considering a motion to dismiss would be one asserting that the State controlled the real property in question. *See Cone v. State*, 2002 Tenn. App. LEXIS 591, at \*8 (finding that the Claims Commission improperly granted the State’s motion to dismiss under section 9-8-307(a)(1)(C) because the plaintiff’s amended complaint specifically alleged that the State exercised control over the real property in question.)

Section 9-8-307(a)(1)(N) provides for the exercise of jurisdiction by the Claims Commission when the acts or omissions of a State employee result in

[n]egligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. *The claimant must prove under this subdivision that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions.*

Tenn. Code Ann. § 9-8-307(a)(1)(N) (Supp. 2002) (emphasis added). The second sentence, emphasized above, was added by amendment after the accident in which the Decedent died. Even assuming that the amendment would not be applicable to this case because it was added after the accident at issue, we must conclude that the amendment only clarifies the original intent of the legislature. Section 9-8-307 merely grants jurisdiction to a claimant; it does not create a cause of action. Tate must demonstrate that her claim arises out of a private right of action expressly conferred in an individual claimant against the State.

Tate argues that the Commissioner of Transportation's duties as outlined in section 4-3-2303 create such a private right of action. At most, however, the statute creates in the Commissioner of Transportation duties owed to the general public. The statute does not expressly create a private right of action by individuals against the State.<sup>4</sup> Because Tate cites no statute in which the general assembly expressly conferred a private right of action, we must conclude that the Claims Commission did not err in dismissing Tate's claim under section 9-8-307(a)(1)(N) of the Tennessee Code Annotated.

The decision of the trial court is affirmed. Costs are taxed to appellant, Stephanie Tate, and her surety, for which execution may issue, if necessary.

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HOLLY KIRBY LILLARD, JUDGE

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<sup>4</sup>*See Ezell v. Cockrell*, 902 S.W.2d 394, 397 (Tenn. 1995) ("The public duty doctrine originated at common law and shields a public employee from suits for injuries that are caused by the public employee's breach of a duty owed to the public at large.").